



Issue Date: 01 April 2016

CASE NO.: 2015-SOX-00027

In the Matter of:

VALERIE PENATE,
Complainant,

vs.

WYNDHAM VACATION OWNERSHIP,
Respondent.

ORDER VACATING HEARING AND DISMISSING CASE

This proceeding arises from a complaint filed by Valerie Penate against Wyndham Vacation Ownership on April 30, 2015, alleging a violation of Section 806 of the Corporate And Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A. It was initiated before the Office of Administrative Law Judges (“OALJ”) on August 18, 2015, when the Complainant appealed a July 15, 2015, determination issued by the Assistant Regional Administrator for the Occupational Health and Safety Administration dismissing her complaint. It is currently scheduled to go to hearing before me beginning May 19, 2016, in Orlando, Florida.

On March 30, 2016, the Complainant filed a document entitled “Claimant Valerie Penate’s Voluntary Dismissal Pursuant to 20 C.F.R. § 702.225,” asking to withdraw this case immediately and that this case be dismissed without prejudice. I initiated a telephone status conference on March 31, 2016, with counsel for both parties to discuss the request.

During that status conference, I advised the Complainant that 20 C.F.R. § 702.225 does not apply to this proceeding. It is a provision that allows a dismissal without prejudice of claims for workers’ compensation benefits filed under the Longshore and Harbor Workers’ Compensation Act. I further explained that the CFR section that applies to this case is 29 C.F.R. § 1980.111(c). The language of 29 C.F.R. § 1980.111(c) allows a complainant to withdraw her request for a hearing before the ALJ findings or order becomes final. However, with such a withdrawal the Administrator’s determination in the case that was appealed becomes the final decision in this case and the dismissal of the case before the OALJ is with prejudice.

I asked Complainant's counsel to confirm that she understood that a dismissal of this case would result in a dismissal with prejudice and that the Complainant agrees to such a dismissal. She confirmed that she understood that a dismissal would be with prejudice.

In light of this development, it is hereby ORDERED that the hearing scheduled to begin May 18, 2016, be VACATED. It is further ORDERED that this case be DISMISSED WITH PREJUDICE.

Additionally, pending before me is a motion for sanctions filed by Respondent with regard to discovery issues in this case. Because of the withdrawal of the hearing request, I deem the motion for sanctions to be moot and will not rule on it.

JENNIFER GEE
Administrative Law Judge